

April 7, 2010



Mr. Patrick Morris
Senior Water Quality Control Engineer
Central Valley Regional Water Quality Control Board
11020 Sun Center Drive, #200
Rancho Cordova, California 95670

Re: Comments on the Proposed Basin Plan Amendment and Delta
Methylmercury TMDL

Dear Mr. Morris:

The State Water Contractors, Inc. (“SWC”) are submitting this letter on behalf of itself and the 27 member SWC that comprise the SWC.¹ Future participation in these proceedings may be on behalf of the SWC or any of the members listed below. The SWC is submitting these comments on the proposed Basin Plan Amendment (BPA) and associated February 2010 Staff Report for the Amendments to the Water Quality Control Plan for the Sacramento River and San Joaquin River Basins for the Control of Methylmercury and Total Mercury in the Sacramento-San Joaquin Delta Estuary (Delta) (Staff Report).

The SWC appreciates the opportunity to review and comment on these documents which set forth the proposed Delta Mercury Control Program and regulations for implementing a Total Maximum Daily Load (TMDL). In brief, the SWC join in and support the general and specific comments and attachments submitted by the Department of Water Resources and the Central Valley Flood Protection Board (collectively “Agencies”). For purposes of your initial consideration, the SWC will not repeat those comments here, but rather incorporates them by reference as though fully set forth. We also support the “redline” edit of the proposed BPA which is Attachment 2 to the letter from the Agencies. Attachment 2 sets forth possible changes that may address several of the concerns expressed in the Agencies’ comments. By submitting these comments, the SWC is not waiving its right to provide additional comments at the Central Valley Regional Water Quality Control Board hearing on April 22.

¹The SWC members are: Alameda County Flood Control & Water Conservation District, Zone 7; Alameda County Water District; Antelope Valley-East Kern Water Agency; Casitas Municipal Water District on behalf of the Ventura County Flood Control District; Castaic Lake Water Agency; Central Coast Water Authority on behalf of the Santa Barbara County Flood Control & Water Conservation District; City of Yuba City; Coachella Valley Water District; County of Kings; Crestline-Lake Arrowhead Water Agency; Desert Water Agency; Dudley Ridge Water District; Empire-West Side Irrigation District; Kern County Water Agency; Littlerock Creek Irrigation District; The Metropolitan Water District of Southern California; Mojave Water Agency; Napa County Flood Control & Water Conservation District; Oak Flat Water District; Palmdale Water District; San Bernardino Valley Municipal Water District; San Gabriel Valley Municipal Water District; San Geronio Pass Water Agency; San Luis Obispo Co. Flood Control & Water Conservation District; Santa Clara Valley Water District; Solano County Water Agency; and Tulare Lake Basin Water Storage District.

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Generally, the SWC supports the efforts of the Central Valley Regional Water Quality Control Board (Regional Board) to take the necessary steps to identify methods to control methylmercury in the Delta. The newly proposed designated beneficial uses of commercial and sport fishing in the Delta are important uses that need to be addressed in order to protect human health and fish and wildlife. We also support certain portions of the Regional Board's proposed BPA and TMDL for controlling both methyl and total mercury to reduce fish tissue values to levels that are safe for both fish and wildlife and Delta anglers. For example, the SWC agree with the Agencies that studies to identify actions to reduce production of methylmercury from dredging and habitat restoration activities should be undertaken.

Despite our general support, the SWC have significant concerns with certain aspects of the proposed BPA and TMDL as well as its implications for future water management in the State. Among our concerns are that implementation of the TMDL not interfere with or cause to become infeasible (including financially infeasible) the development of large scale habitat programs to benefit the Delta system. The development of large scale habitat is a central component of the Bay Delta Conservation Plan ("BDCP"). We are also concerned that the Regional Board clarify that the legal standard for protection of beneficial uses is one of reasonableness. The draft is inconsistent in its expression of this important legal principle.

We understand the desire of some stakeholders to have the control of methylmercury assumed by the State. In some respects this may be necessary, however it should not be undertaken without first considering whether there are entities that today or in the past (where such responsible entities or their insurance policies still exist) are responsible for contributing to or exacerbating the historical existence of mercury. When allocating responsibilities, the Regional Board must do so in a way that does not simply transfer this responsibility from one set of water users to another. Neither the State Water Project nor the Central Valley Project are responsible for the mercury that exists in the system. In fact, it may well be that the retention times for water stored by the projects actually reduces methylization. Nevertheless, any program of implementation that seeks to impose this obligation on the State must do so in a manner that does not redirect this obligation to either the SWP or CVP.

If you have any questions regarding the SWC comments, please contact Terry Erlewine, General Manager, State Water Contractors, at (916) 447-7357, ext. 203.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Erlewine', written in a cursive style.

Terry L. Erlewine
General Manager